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No. 09-301

Supreme Court, U.S.
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In The
Supreme Court of the United States

COMMON CAUSE OF PENNSYLVANIA, *et al.*,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

JOINT BRIEF FOR RESPONDENTS LEADERS OF THE PENNSYLVANIA SENATE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

(1) Whether Petitioners have standing to challenge the process by which the state legislature enacted a generally applicable statute when the statute did not affect them in any exceptional way.

(2) Whether Petitioners have standing to challenge the process by which a state court would have decided a challenge to a state statute, when they did not bring the state court action and do not contend that they were about to bring it when they commenced this matter.

(3) Whether, even if Petitioners had standing to assert the challenge described in (2), the underlying claim is nonjusticiable because (a) Petitioners failed to plead it and the alleged injury on which it is based in their Second Amended Complaint, or (b) it constitutes a challenge to a state court judgment and, therefore, the district court would lack jurisdiction over it.

RULE 14.1(b) COUNTERSTATEMENT

Petitioners make numerous misstatements in their Rule 14.1(b) Statement regarding the parties to this action.

First, they identify "Robert C. Jubelirer, personally, and his successor in office, Dominic F. Pileggi, in his official capacity as the Majority Leader of the Senate of Pennsylvania." Petition at ii. However, when this case began, Robert C. Jubelirer was President *pro tempore* of the Senate (not Majority Leader) and his successor as President *pro tempore* is Joseph B. Scarnati, III.

Second, they identify "David J. Brightbill, personally and his successor in office, Jane Clare Orie, in her official capacity as the Majority Whip of the Senate of Pennsylvania." *Id.* However, when this case began, David J. Brightbill was Majority Leader of the Senate (not Majority Whip) and his successor as Majority Leader is Dominic F. Pileggi.

Third, they identify "Michael A. O'Pake, in his official capacity as the Minority Whip of the House of Representatives of Pennsylvania." *Id.* at ii-iii. However, Michael A. O'Pake is not a member of the House of Representatives. He is a member of the Senate and has been for over 35 years. He currently serves as Minority Whip of the Senate.[1]

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[1] Petitioners make other errors with respect to the defendants/appellees who were and are leaders in the Pennsylvania House of Representatives, which their counsel is expected to address.

RULE 14.1(b) COUNTERSTATEMENT –
Continued

Fourth, they identify "Ralph J. Cappy, personally and his successor in office, Ronald D. Castille, in his official capacity as the Chief Justice of the Supreme Court of Pennsylvania." *Id.* at iii. They fail to inform this Court that former Chief Justice Cappy died in May 2009.

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COUNTERSTATEMENT OF THE CASE

This case centers on an enactment of the General Assembly of Pennsylvania, Act No. 2005-44 ("Act 44"), which increased the compensation of certain public officials in the Commonwealth of Pennsylvania. Petitioners, who present themselves as advocates of government reform and opponents of the pay-raise legislation, assert that their case arises from a purported scheme among Commonwealth officials to trade enactment of the pay raise for favorable rulings by the Supreme Court of Pennsylvania. Petitioners have used, and continue to use, this lawsuit as a vehicle to make scandalous allegations and to seek media attention. However, under the scrutiny of both the federal district court judge and a federal appellate three-judge panel, Petitioners have not been able to show that they have either standing or a justiciable claim.

I. PROCEDURAL HISTORY

Petitioners filed suit in federal district court against elected officials in leadership positions in the three branches of Pennsylvania government. Their Second Amended Complaint[1] alleges that the actions of these officials violated the state and federal constitutions. As a remedy, they want a federal court

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[1] A copy of Plaintiffs' Second Amended Complaint is included in the Appendix filed in the Third Circuit ("Third Cir. App.") at pages 21-77.

to intervene in the processes of state government by taking action such as enjoining the state supreme court from citing or relying on its own precedent, declaring Act 44 (a state law that was subsequently repealed) to be invalid, declaring that private conversations between the judiciary and other branches of government on certain legislative matters are unconstitutional, and permanently enjoining state legislators and their successors from enacting legislation in violation of Petitioners' view of the Pennsylvania Constitution and "by similar means" that inhibit the freedom of political speech. *See* Second Amended Complaint at 59-60.[2]

The district court concluded that Petitioners lack standing to raise these claims, that the case is moot and that the Second Amended Complaint fails to state a claim upon which relief may be granted. *See Common Cause of Pa. v. Commonwealth*, 447 F. Supp.2d 415 (M.D. Pa. 2006) (characterized as "a very thorough decision" by the Third Circuit panel). The Third Circuit panel affirmed the district court on the basis that Petitioners lack standing. *See Common Cause of Pa. v. Commonwealth*, 558 F.3d 249 (3d Cir. 2009).

In an attempt to address their lack of standing, Petitioners have shifted theories and changed or added allegations at various stages of the case. For example, the Second Amended Complaint alleges that the harm suffered was the payments made to

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[2] *See* Third Cir. App. at 75-76.

members of the General Assembly pursuant to Act 44. *See* Second Amended Complaint at 49 (citing such payment under the heading "Cognizable Harm is Not Speculative and Has Already Occurred Under the Act.").[3] However, Petitioners abandoned that theory and conceded that they are not asserting standing based on their status as taxpayers. *See Common Cause of Pa.*, 558 F.3d at 260 n.4.

Petitioners now assert they were litigants in cases in which Respondents allegedly traded the pay raise implemented by Act 44 for desired outcomes in cases decided by the Supreme Court of Pennsylvania. *See, e.g.*, Petition at 2 ("This action arises from an alleged scheme by the Respondents to trade a massive pay-raise for desired decisions by the state Supreme Court. Those decisions, in cases in which the Petitioners here were litigants, concerned state constitutional provisions ensuring public knowledge of and participation in the legislative process."), 8 (describing "allegations by various [unnamed] legislators" that Petitioners learned "[i]n the course of this litigation"), and 14 (asserting "corruption of cases in which they were litigants (or intended litigants)"). Setting aside, for purposes of a motion to dismiss, the veracity of their bold allegations, Petitioners do not allege these facts in their Second Amended Complaint. Petitioners, after filing three versions of the

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[3] *See* Third Cir. App. at 66.

complaint, have resorted to arguing the case they wish they brought, not the case they actually filed.

Petitioners also attempt to assert standing by alleging that they could have or would have filed suit to challenge Act 44 in a biased state court but did not because they believed the outcome would have been fixed. *See* Petition at 7. Petitioners' failure to allege they were litigants in a case fixed by the purported vote-trading scheme associated with Act 44 or to allege they suffered an injury different from the abstract grievances of all citizens was a reason the Third Circuit panel correctly concluded that Petitioners lack standing. *See* 558 F.3d at 263.

The Third Circuit panel accepted as true all well-pled allegations and construed them in the light most favorable to Petitioners. *Id.* at 253-56, 257. The panel then carefully analyzed the standing of each Petitioner with respect to each claim, and concluded that all Petitioners lack standing to raise these claims relating to the enactment of Act 44 and alleged scheme surrounding it. *Id.* at 260-70. In reaching this conclusion, the panel relied on well-established precedent from this Court. *Id.* at 257-60.

II. ACT NO. 44 OF 2005

On July 7, 2005, the General Assembly of Pennsylvania passed and the Governor signed Act 44, which increased compensation for the Executive, Legislative and Judicial Branches of the Commonwealth of Pennsylvania. The prospect of increases in public

compensation appeared in the press prior to the enactment of Act 44; no citizens were prohibited from, or punished for, petitioning or expressing their views on the issue. The Report of the Pennsylvania Supreme Court's Master on Funding the Unified Judicial System, previously posted at www.courts.state.pa.us/Index/Supreme/IndexSupreme.asp, called for sweeping changes to judicial compensation. Act 44 implemented only some of those changes.

Four months after its enactment and in response to public opposition to the pay raise, the General Assembly repealed Act 44 in its entirety. *See* Act No. 2005-72 ("Act 72"). Following the repeal, several state judges filed suit challenging Act 72 as an unconstitutional reduction in the compensation of judges during their terms of office, prohibited by Pa. Const. art. V, § 16(a). The Supreme Court of Pennsylvania determined that the portion of Act 72 repealing the increase in judicial compensation enacted by Act 44 violated Pa. Const. art. V, § 16(a), and that the enactment of Act 44 did not violate Pa. Const. art. III. *See Stilp v. Commonwealth*, 905 A.2d 918, 929-49 (Pa. 2006).

After this decision, the General Assembly established a new statutory scheme for judicial compensation when it enacted Act No. 2007-30 ("Act 30"). In Act 30, the General Assembly explicitly repealed the judicial salary provisions of Act 44 and set judicial compensation at an amount equal to the salaries that had been enumerated in Act 44 plus one dollar. While Act 44 is mentioned, Act 30 is a new enactment that

implements new judicial salaries. Thus, Act 44 and the judicial compensation provisions of Act 72 no longer provide the legal basis for paying salaries of public officials in the Commonwealth of Pennsylvania.

Although Act 44 was effectively erased as a matter of law, it was not erased from the minds of voters. This Court can take judicial notice of the fact that, in the 2006 election, many incumbent legislators, including three of the original defendants, were not re-elected following the pay raise. The repeal of Act 44 and the 2006 election results demonstrate the effectiveness of the political process. They also lend support to the existing confines of federal court jurisdiction, with its well-settled case law, which allow the political process, rather than the judicial process, to address generalized grievances like those raised in this case.

SUMMARY OF ARGUMENT

Petitioners claim injury as a result of: (1) the process the Pennsylvania legislature used to enact Act 44 (which, Petitioners contend, caused them to be "subjected to representation by legislators not accorded the minimum incidents of legislative membership" and resulted in the "suppress[ion] [of] public knowledge and [Petitioners'] opportunity to be heard"); and (2) the process by which the Pennsylvania courts

would have decided a challenge to Act 44 had Petitioners brought one (which, Petitioners contend, would have been "corrupted" and devoid of an impartial decisionmaker). Petition at 14, 16.

The Third Circuit panel correctly concluded that the first process could not have caused Petitioners a legally cognizable injury and, therefore, they lack standing to challenge it. The panel also correctly concluded that the second process, because it is hypothetical, could not have resulted in "actual" or "imminent" injury to Petitioners and, therefore, they lack standing to challenge it. The panel's decision is consistent with this Court's decisions and does not represent a conflict among the circuits as to what constitutes a generalized grievance.

Even if the second process had caused a non-hypothetical injury, the underlying claim is not justiciable because: (1) Petitioners failed to plead it (or the injury) in their Second Amended Complaint; and (2) it represents a collateral attack on a state court judgment and, therefore, under the *Rooker-Feldman* doctrine, the district court would lack jurisdiction over it.

ARGUMENT

I. THE THIRD CIRCUIT PANEL'S DECISION IS CONSISTENT WITH THIS COURT'S PRECEDENT ON STANDING

A. Petitioners Lack Standing to Challenge the Act 44 Enactment Process

Petitioners argue that because they characterize the process by which Act 44 was enacted as having violated their individual equal protection and First Amendment rights, they are not asserting a "generalized grievance" within the meaning of this Court's precedent on standing. But the self-serving labels Petitioners affix to their challenge cannot change the fact that they are challenging the process by which a generally applicable state statute was enacted and that, as a matter of law, such a process does not implicate individual rights.

The process by which a statute is enacted is just that – a *process* that generates a statute. For federal constitutional purposes, a statute can constitute state action, but the process by which it is enacted cannot. In connection with the enactment of a generally applicable state statute, the only process that is "due" under the federal Constitution is the right of citizens to vote for or against the elected officials (legislators and governor) involved in the enactment of the statute. As the Third Circuit panel correctly recognized, Petitioners' challenge to the process by which Act 44 was enacted is not premised on a legally

cognizable injury and, consequently, Petitioners lack standing to assert it.

These principles are illustrated by this Court's seminal decision in *Bi-Metallic Investment Company v. State Board of Equalization of Colorado*, 239 U.S. 441 (1915). There, the Court explained:

> The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.

Id. at 445. By contrast, when only "[a] relatively small number of persons [is] concerned," and those persons are "exceptionally affected" by a rule or regulation, "in each case upon individual grounds," then "they [have] a right to a hearing." *Id.* These fundamental principles have been reaffirmed by this Court on a number of occasions following *Bi-Metallic*. *See, e.g., Atkins v. Parker*, 472 U.S. 115, 125-26 (1985) (government has no duty to "give notice of a general change in the law"); *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271, 285 (1984) ("Government makes so many policy decisions affecting so many people that it would likely grind to a halt were policymaking constrained by constitutional requirements on whose voices must be heard."); *Texaco*

v. Short, 454 U.S. 516, 536 (1982) ("it has never been suggested that each citizen must in some way be given specific notice of the impact of a new statute on his property before that law may affect his property rights").

Here, Petitioners do not allege they were injured by the *substance* of Act 44, a generally applicable state statute; they argue they were injured by the *process* by which the statute was enacted. They are asserting only an abstract injury as opposed to the deprivation of an individual right. Under *Bi-Metallic*, their individual rights could not have been impeded by the enactment process unless Act 44 had exceptionally affected a small group of people that included them, which it did not (and they do not allege otherwise).[4] Therefore, the "only way," under the federal Constitution, that Petitioners may seek a remedy for their grievance is to exercise their "power, immediate or remote, over those who make the rule," *i.e.*, to vote against the legislators and governor who enacted Act 44 and encourage others to join them in this endeavor. *Bi-Metallic*, 239 U.S. at 445.

As the Third Circuit panel stressed, Petitioners' "allegations, which challenge the legislative process, are insufficient to allege more than a generalized,

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[4] As the *Stilp* decision illustrates, *see* 905 A.2d 918, the process was challenged as violative of state constitutional provisions. Petitioners asserted similar state claims in their Second Amended Complaint but did not appeal the district court's dismissal of those claims.

abstract grievance, shared by all Pennsylvania citizens. The complaint does not attempt to identify an actual, concrete injury that this conduct caused any of the named Plaintiffs." *Common Cause of Pa.*, 558 F.3d at 262; *see also id.* at 264.

Ignoring this reasoning, Petitioners point to their allegations that the Act 44 enactment process impeded their individual First Amendment rights (by allegedly preventing them from having an adequate opportunity to petition the General Assembly during the process) as well as their individual equal protection rights (by allegedly preventing their elected representatives from participating in the process to the same extent as legislative leaders). *See* Petition at 10, 25. They are alleging they were deprived of an individual right to participate to a certain (unidentified) extent in the process, either on an individual basis or through their elected representatives.

However, *Bi-Metallic* and its progeny teach that an enactment process can implicate such a right only when – unlike here – the statute that it generates affects a small number of people (including the person asserting the right) and affects them exceptionally. It is irrelevant that Petitioners believe otherwise and have attempted to sidestep this Court's well-settled precedent by (mis)framing their challenge to the Act 44 enactment process in terms of individual First Amendment and equal protection rights. In *Knight*, this Court expressly rejected the argument that the First Amendment protects an individual

right to participate in the policymaking process. Referring to *Bi-Metallic*, the Court stated:

> Government makes so many policy decisions affecting so many people that it would likely grind to a halt were policymaking constrained by constitutional requirements on whose voices must be heard. . . . Disagreement with public policy and disapproval of officials' responsiveness, as Justice Holmes suggested in *Bi-Metallic*, *supra*, is to be registered principally at the polls.

465 U.S. at 285.[5]

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[5] Not even a legislator has an individual right, as a legislator, to participate in the enactment process to the same extent as every other legislator who participates, as long as the legislator may vote on bills and any disparity in participation is not a punishment for a legislator's independent exercise of a protected right. *See, e.g., Parker v. Merlino*, 646 F.2d 848, 856 (3d Cir. 1981) (rejecting "claims of plaintiff [state] Senators in this case that the failure to allow them 'reasonable' debate in all instances deprives them of their 'right' to fully and effectively represent their constituents and deprives their constituents of full representation"); *Davids v. Akers*, 549 F.2d 120, 124 (9th Cir. 1977) ("It stretches the language of the First Amendment beyond recognition to make it mean that an elected member of the state legislature, who so far as appears, has the usual right of a member to speak to and vote upon matters that come before the House, including the right to appear and testify before its standing committees, has had his right to assemble and petition the government infringed because the Speaker of the House has not appointed him or some of his colleagues to a committee or to certain committees.").

Petitioners proffer no reason why this Court should abandon its precedent. Their challenge to the Act 44 enactment process is *not* premised on any legally cognizable injury and, therefore, they lack standing to assert it.

Petitioners' claim to standing is even more attenuated by the fact that Act 44 has been repealed and that a subsequent enactment (Act 30) by a freshly elected legislature has, in essence, ratified the judicial pay raise that Petitioners oppose. There is no precedent, much less conflicting precedent, for the notion that a legislature can be barred from subsequently addressing an issue, if it has erred constitutionally in its first attempt. Nor is there any precedent for the notion, implicit in Petitioners' claim, that a federal court can superintend elected legislators, who are not parties and many of whom have been elected to office after the events alleged. For these reasons, their claim to standing lacks the crucial element of redressability. *See Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561 (1992). If this were not the case, Congress by now might be barred from legislating on numerous topics that have been addressed by this Court. Having failed to allege a legally cognizable injury, Petitioners are necessarily wrong in arguing that the Third Circuit panel's decision is inconsistent with this Court's precedent.

B. Petitioners Lack Standing to Challenge the Hypothetical State Court Process

Petitioners argue that, even though they did not bring a challenge to Act 44 in a Pennsylvania state court, they have standing to challenge the (allegedly "corrupted") process by which such a court would have decided such a challenge had they brought it. *See* Petition at 14, 16-18. This argument is specious.

A person does not have standing to challenge something if he has not "actually" been injured by it or will not "imminently" be injured by it. *See, e.g.*, *Massachusetts v. E.P.A.*, 549 U.S. 497, 517 (2007) ("a litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent. . . ."); *Lujan*, 504 U.S. at 560 (to have standing, plaintiff must have suffered injury that is "actual or imminent, not conjectural or hypothetical") (internal quotations omitted). Courts do not address issues "in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Massachusetts*, 549 U.S. at 517 (internal quotation omitted).

Petitioners do not contend that they challenged Act 44 in a Pennsylvania state court, because they did not. They do not contend that they were about to commence such a challenge when they filed their Second Amended Complaint. They contend only that it is "likely" that they would have commenced such a challenge at some indefinite and unidentified (as

opposed to imminent) point in the future, without identifying which court would have heard the challenge or why the particular justices or judges who presided over it would have employed the biased decisionmaking process they contemplate. *See* Petition at 16-18. As a result, the process by which a Pennsylvania state court would have decided Petitioners' conceptual challenge is a purely abstract concept and, as such, could not have resulted in an "actual" or "imminent" injury to Petitioners. *See, e.g., Lujan*, 504 U.S. at 564 n.2 (concept of imminence is "stretched beyond the breaking point when, as here, the plaintiff alleges only an injury at some indefinite future time, and the acts necessary to make the injury happen are at least partly within the plaintiff's own control"); *Sea Shore Corp. v. Sullivan*, 158 F.3d 51, 56 (1st Cir. 1998) ("In this case, the injury is not imminent because it depends upon several tenuous contingencies."). As the Third Circuit panel stressed, Petitioners' approach is simply "not sufficient to state the actual or imminent injury necessary for constitutional standing." *Common Cause*, 558 F.3d at 263.

Petitioners' argument that the Third Circuit panel's conclusion is "inconsistent with well-settled precedent as to both the law of pleading and the law of standing" exceeds all the limits of credibility. The Petition should be denied.

C. The Third Circuit Panel's Decision Is Not in Conflict with Precedent from this Court or Other Circuits; Nor Is Applicable Standing Jurisprudence "Confused and Conflicted"

Petitioners suggest the Third Circuit panel's decision and a handful of other Circuit court decisions "confuse allegations of widespread injury to individual rights with a non-justiciable 'generalized grievance.'" *See* Petition at 22-23. That is simply not the case. As explained above, Petitioners here allege no legally cognizable injury to individual rights. They do not have a federal constitutional right (individual or otherwise) to have legislation enacted in a certain manner, nor do they have an individual right with respect to how courts might have decided lawsuits that they did not bring.

Petitioners' failure to allege a legally cognizable injury that they actually suffered (as opposed to abstract complaints about government's failure to follow the law) distinguishes their case from those in which courts have found standing despite injury to many individuals. *See* Petition at 20-21.

This Court recently and clearly addressed the longstanding doctrine involving generalized grievances. *See Lance v. Coffman*, 549 U.S. 437 (2007) (per curiam). In *Coffman*, the Court reinforced the concept that generalized grievances about government, alleging only harm to every citizen's interest in proper application of the Constitution and laws, and seeking

relief that no more directly and tangibly benefits him than it does the public at large, do not confer standing. *Id.* at 439.

Petitioners attempt to show "inter-circuit confusion and conflict" following *Coffman*. The cases they cite, however, involve voting rights and do not show confusion or conflict relating to generalized grievances with respect to the types of claims raised by Petitioners in this case. *See* Petition at 23-24; *see also Coffman*, 549 U.S. at 442 (distinguishing the "unsubstantiated, generalized grievance about the conduct of government" at issue in *Coffman* from voting rights cases where plaintiffs and others suffered a legally cognizable injury to their right to vote).[6]

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[6] For example, Petitioners refer to *Bishop v. Bartlett*, No. 07-1840, 2009 U.S. App. LEXIS 16836 (4th Cir. July 29, 2009), as being in conflict with the decision in this case, but do so without describing the issue most analogous to this case or the court's ultimate conclusion that no plaintiff had standing. *See* Petition at 23. When reviewed in its entirety, *Bishop* is entirely consistent with the Third Circuit panel's decision. In *Bishop*, the Fourth Circuit concluded the plaintiffs lacked standing to bring a due process challenge to the manner in which the state adopted a constitutional amendment. Plaintiffs were four citizens who asserted that the ballot language describing the amendment was misleading and that the amendment unconstitutionally authorized local governments to issue bonds for certain development projects without voter approval. The Fourth Circuit properly found this to be a generalized, abstract grievance. 2009 U.S. App. LEXIS 16836 at *8-9.

Petitioners focus on one of the plaintiffs in *Bishop* who was a resident of a city where tax increment financing bonds were preliminarily approved without a referendum, and who thus lost

(Continued on following page)

Finally, Petitioners' purported concern that the interpretation set forth in the Third Circuit panel's opinion "would bar all constitutional litigation involving claims shared by large numbers of litigants" is also unfounded. *See* Petition at 26-27. This Court has already made clear that a grievance is not generalized solely because it is shared by a large number of people. *See, e.g., Federal Election Comm'n v. Akins*, 524 U.S. 11, 24 (1998). The Third Circuit panel's opinion does not hold otherwise.

To the contrary, the opinion acknowledges that "[o]ften the fact that an interest is abstract and the fact that it is widely shared go hand in hand. But their association is not invariable, and where harm is concrete, though widely shared, the [Supreme] Court has found 'injury in fact.'" 558 F.3d at 260 (quoting *Akins*, 524 U.S. at 24, and citing *Massachusetts*, 549 U.S. at 517). The panel's opinion also cites a recent case in which the Third Circuit found that "[a]ppellants lack standing, . . . not because the alleged injuries they suffer are widely felt, but because their

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the right to vote on a particular project that had reached a point where issuance of bonds was "imminent." *Id.* at *9. The court found an injury in fact to that individual's right to vote, but did not find the requisite causation (or redressability), because the alleged harm was not caused by any direct governmental action toward him, but rather by a process. *Id.* at *10-12. This conclusion is not inconsistent with *Coffman* or the Third Circuit panel's opinion in this case. The other cases cited by Petitioners similarly fail to support their claim of confusion and conflict. *See* Petition at 23-24.

injuries are no different in nature from the general interest in enforcing compliance with the law which the public shares." *Id.* (quoting *Goode v. City of Philadelphia*, 539 F.3d 311, 322 (3d Cir. 2008)). Rather than barring all constitutional litigation involving claims shared by large numbers of litigants, what the panel's opinion would bar are claims by those who, like Petitioners, have not suffered an actual, legally cognizable injury. 558 F.3d at 260.

The Third Circuit panel's decision is consistent with recent decisions of this Court, such as *Coffman* and *Daimler-Chrysler Corp. v. Cuno*, 547 U.S. 332 (2006), and it is unnecessary for this Court to revisit or redefine principles of standing as applied to generalized grievances. The Petition should be denied.

II. EVEN IF THE HYPOTHETICAL STATE COURT PROCESS HAD CAUSED PETITIONERS A NON-HYPOTHETICAL INJURY, THEIR UNDERLYING CLAIM IS NOT JUSTICIABLE

A. Neither the Underlying Claim Nor the Injury Was Properly Pled

The Petition is filled with allegations that Petitioners were injured by the process by which a challenge they might have brought to Act 44 would have been decided by a Pennsylvania state court, because the process allegedly would have been "corrupted" and involved a biased (i.e., "bribed") decision-maker in violation of the Due Process Clause. *See,*

e.g., Petition at 8, 10, 14, 16, 25. But, as explained above in Argument Part I.B, this conceptual challenge and hypothetical injury approach does not demonstrate an "actual" or "imminent" injury and, therefore, Petitioners lack standing to assert the claim. But even if it is assumed that Petitioners have shown a non-hypothetical injury, they cannot litigate the claim because they did not plead it (or the injury) in their Second Amended Complaint.

Petitioners did not plead that they did, were about to, would, or were "likely" to challenge Act 44 in a Pennsylvania state court. They also did not plead that (or how) the process by which the court would have decided the challenge would have impeded their due process rights. *See* Second Amended Complaint.

Accordingly, the Petition should be denied because Petitioners failed to properly assert this claim or injury and failed to meet their burden of establishing the elements required for standing. *See* Fed.R.C.P. 8(a)(2) ("A pleading that states a claim for relief *must contain* . . . a short and plain statement of the claim showing that the pleader is entitled to relief.") (emphasis added); *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009) (failure to plead facts to state a claim); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998) ("First and foremost, there must be alleged (and ultimately proven) an 'injury in fact' and the plaintiff 'bears the burden of establishing its existence.'") (internal citations omitted).

B. The Claim Amounts to a Collateral Attack on a State Court Judgment

Even if Petitioners had standing to assert (and had properly pled) their claim regarding how a Pennsylvania court might have decided their hypothetical challenge to Act 44, the district court would lack jurisdiction over that claim. Indeed, because the claim represents a challenge to a state court judgment, the *Rooker-Feldman* doctrine would bar the district court from hearing it.

Petitioners argue that, in the process of adjudicating their possible challenge to Act 44, a state court would have relied on a "bribe," which would have caused the challenge to be decided against them and, therefore, impeded their due process rights. *See* Petition at 8, 10, 14, 16, 25. In other words, Petitioners believe that the state court judgment would have been unconstitutionally tainted by a biased decisionmaking process. However, it is well-established that, under the *Rooker-Feldman* doctrine, a district court lacks jurisdiction over any claim challenging a state court judgment (whether that judgment is hypothetical, as here, or real).

For example, in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), the District of Columbia Court of Appeals denied certain individuals' petitions concerning admission to the District of Columbia bar. The individuals filed challenges to the denials in a federal district court, arguing that the denials impeded their rights under the Fifth

Amendment and federal antitrust laws. This Court, citing the statute at 28 U.S.C. § 1257 (which addresses its jurisdiction over state court judgments), concluded that federal district courts lack jurisdiction over collateral attacks on state court judgments, including claims that such judgments are unconstitutional:

> United States district courts, therefore, have subject-matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state-court judgment in a particular case. *They do not have jurisdiction, however, over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in this Court.*

Id. at 486 (emphasis added); *see also Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996) ("If the injury alleged resulted from the state court judgment itself, *Rooker-Feldman* directs that the lower federal courts lack jurisdiction."); *GASH Associates v. Village of Rosemont*, 995 F.2d 726, 727 (7th Cir. 1993) ("Litigants cannot file collateral attacks on [state] civil judgments; instead they must seek review in the Supreme Court. The *Rooker-Feldman* doctrine creates a jurisdictional obstacle to collateral review, one we must respect even if the parties do not present the issue for decision.").

The rule is no different when a state court judgment is challenged on grounds that it was rendered through a biased decisionmaking process. In *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923), this Court explained that the presence of a bias claim in a challenge to a state court judgment does not confer jurisdiction on a federal district court to decide the challenge: "[T]he [bias] charge does not change the nature of the bill or require that it be given any effect which it otherwise would not have." *Id.* at 417; *see also Bianchi v. Rylaarsdam*, 334 F.3d 895, 901 n.5 (9th Cir. 2003) ("The [*Rooker*] Court [ ] explicitly stated that the existence of this bias claim did not change its conclusion that the district court lacked jurisdiction to review Rooker's claim [challenging a state court judgment].").

Here, Petitioners' claim is that, had they challenged Act 44 in a Pennsylvania state court, a bribe would have infected the court's decisionmaking process and caused it to enter judgment against them, in violation of the Due Process Clause. This claim is effectively a bias challenge to a state court judgment, which, as explained above, is not within the jurisdiction of a federal district court. It is of no consequence that Petitioners did not actually bring the state court action and that the judgment in question was therefore not actually entered. Indeed, because Petitioners are barred from challenging an *actual* state court judgment in a federal district court, *a fortiori* they are barred from challenging an *imaginary* one. That is, they cannot circumvent

Rooker-Feldman by relying on hypotheticals. The district court below would not have jurisdiction over Petitioners' claim. The Petition should be denied.

CONCLUSION

The Leaders of the Pennsylvania Senate request that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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